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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MICHAEL GLOSTER and VICTORIA
GLOSTER t/a GLOSTER MARKETING,

Opposer,

v.

RELIOS, INC.
(formerly Carlisle Jewelry Company, Inc.),

Applicant.

Opposition No. 113,487



08-12-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #73

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OPPOSER'S RESPONSE TO APPLICANT'S MOTION TO COMPEL

I. STATEMENT OF THE ISSUE

Pursuant to 37 CFR §§ 2.119(c) and 2.120 and Sections 502.03 and 523 of the Trademark Trial and Appeal Board Manual of Procedures ("TBMP"), Opposer Michael Gloster and Victoria Gloster, t/a Gloster Marketing ("Opposer" or "Gloster") hereby submits this brief in opposition to Applicant Relios, Inc.'s, f/k/a Carlisle Jewelry Company, Inc. ("Applicant" or "Relios"), Motion to Compel. The stated basis for Applicant's Motion to Compel discovery responses is that Opposer allegedly "failed to comply" with Applicant's interrogatory and document discovery demands, and that Opposer's objections to Applicant's demands are "unjustified."

Applicant's Motion to Compel is disingenuous and must be denied because: (1) Applicant fails to inform the Trademark Trial and Appeal Board (the "Board") of Opposer's July

30, 2002 supplemental document production and interrogatory responses; (2) Applicant's motion is premature in that Applicant has made no good faith effort to try to resolve the issues presented in this motion with Opposer; (3) Applicant failed to comply with the requirement of 37 CFR § 2.120(e) that the moving party must support its motion with a written statement that it has made good faith efforts to resolve the issues subject of the motion; and (4) because Applicant's motion is baseless in addition to the reasons (1) – (3) because Opposer's objections to certain of Applicant's discovery demands as stated on July 30, 2002 are proper. For all these reasons, Applicant's Motion must be denied.

II. ARGUMENT

A. Applicant's Motion Must Be Denied Because Applicant Did Not Disclose All the Relevant Facts To the Board, Has Not Negotiated In Good Faith To Resolve Disputed Issues and Has Not Complied With the Rules Governing Motions To Compel.

Contrary to Applicant's representation to the Board, the facts with respect to discovery in this matter demonstrate that Applicant's motion is disingenuous, premature, and does not comply with the requirements necessary for the Board to issue an order to compel discovery. As such, Applicant's Motion must be denied as a matter of law.

Applicant correctly informed the Board that it remained silent with respect to any complaints it had with respect to Opposer's discovery submissions for approximately **700 days** after being served with Opposer's responses on **August 15, 2000**. Relios' Motion, pp. 1-2. Applicant is also correct in its statement that Opposer has supplemented its responses subsequent to its initial August 15, 2000 answers, production and objections. Id. at p. 1. However, Applicant failed to disclose to the Board the action recently taken by Opposer in an attempt to respond to Applicant's July 12, 2002 complaints with respect to Opposer's discovery responses.

After having waited **700 days** after Opposer first responded to Applicant's requests for documents and interrogatory answers, it was not until **20 days** prior to end of the discovery period -- July 12, 2002 -- that Applicant *first* voiced its complaints concerning Opposer's discovery responses. In its July 12, 2002 letter, Opposer requested a response from Applicant by July 30, 2002. On **July 30, 2002**, Opposer faxed its response to Applicant *mid-day*, as well as sent out the original letter and a supplemental document production by *overnight mail for morning delivery*. A copy of Opposer's July 30, 2002 Letter (without the enclosed supplemental production) and Facsimile Confirmation is attached hereto as Exhibit A.

Despite Applicant having received Opposer's response to Applicant's July 12, 2002 letter on July 30, 2002, Applicant still went ahead and filed this Motion to Compel on July 31, 2002. To date, Applicant has not called or written to Opposer subsequent to its receipt of Opposer's July 30, 2002 supplemental discovery answers and document production. Applicant makes no reference to Opposer's response to Applicant's July 12, 2002 letter in its Motion. Further, the August 1, 2002 discovery deadline did not necessitate the filing of this Motion. See TBMP § 523.03 ("A motion to compel does not necessarily have to be filed during the discovery period. . . . [T]he motion should be filed within a reasonable time after the failure to respond to a request for discovery or after service of the response believed to be inadequate." (citation omitted)).

37 CFR § 2.120(e) requires the party moving for an order to compel discovery to support its motion with a:

written statement . . . that such party or the attorney therefore has made a *good faith effort, by conference or correspondence*, to resolve with the other party or the attorney therefore the issues presented in the motion and *had been unable to reach agreement*.

See also, TBMP § 523.02. Applicant has not made any effort to discuss or resolve outstanding disputes with Opposer, particularly in light of Opposer's recent attempt on July 30, 2002 to respond to Applicant's complaints. Nor has Applicant alleged in its Motion either that it has made such good faith efforts or that the parties have been unable to reach an agreement. Opposer believes Applicant's, and not opposer's, actions demonstrate an attempt to "game" the system. See Relios' Motion, p. 2. Applicant's Motion must be denied.

B. Applicant's Motion Must Be Denied Because Opposer Made Proper Objections to Certain of Applicant's Discovery Requests.

On July 30, 2002, Opposer provided Applicant with a supplemental document production, as well as supplemental interrogatory answers. Additionally, Opposer maintained those objections, such as to relevancy, to certain discovery requests believed proper. See, Exhibit A. Opposer's actions are consistent with procedure as stated in the TBMP. See, TBMP § 414 ("It is generally inappropriate for a party to respond to a request for discovery by filing a motion attacking it, Rather, the party ordinarily should respond by providing the information sought in those portions of the request which it believes to be proper, and stating its objections to those which it believes to be improper."). Applicant's statements in its July 12, 2002 complaint letter, such as "[y]our objection as to relevance is so unfounded that no further comment is necessary," do nothing to convince Opposer and should do nothing to persuade the Board, that Opposer's objections are improper. See, e.g., Exhibit A to Relios' Motion, p. 7. As such, Applicant has made no showing that it is entitled to an order to compel discovery, and consequently, its Motion to Compel must be in all respects denied.

III. CONCLUSION

For the foregoing reasons, Opposer respectfully requests that Applicant's Motion to Compel be denied.

Respectfully submitted,

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Dated: August 9, 2002

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July 30, 2002

**By Facsimile (w/out encls.) (512) 703-1250
and Overnight Mail (w/encls.)**

Dwayne K. Goetzel, Esquire
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The Chase Bank Building
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Austin, TX 78701-3102

Re: Michael Gloster and Victoria Gloster t/a Gloster Marketing v. Relios, Inc.
(formerly Carlisle Jewelry Co., Inc.), Opposition No. 113,487

Dear Mr. Goetzel:

I write in response to your July 12, 2002 letter concerning your review of Opposer's discovery responses in the above matter, which were served on Applicant in August, 2000. Enclosed please find additional documents found during a supplemental review of Opposer's files which are responsive to Applicant's Request for Production of Documents and Things.

Your questions concerning Opposer's answers and objections to Applicant's First Set of Interrogatories are addressed in turn below.

Interrogatory 1: Opposer responded to this interrogatory.

Interrogatory 2: Michael and Victoria Gloster.

Interrogatory 5: Opposer maintains its objections to this interrogatory. Opposer's sales figures are confidential and irrelevant. We are prepared to provide documentation to show continuous use of Opposer's marks.

Interrogatory 6: Opposer maintains its objections to this interrogatory. Opposer's advertising expenditures are confidential and irrelevant. We are prepared to provide documentation to show continuous use of Opposer's marks.

Interrogatory 7: Opposer maintains its objection to this interrogatory. Subject to this objection, Opposer states that its "LOVING FAMILY" and "LOVING/DANCING FAMILY" products have been advertised in and offered through the Smithsonian, Museum Company, Strawbridge & Clothier, Bloomingdale's, What on Earth, Dayton-Hudson, Marshall Field, May Co. Bailey Banks & Biddle, Signals, Seasons, Harrison's of Barbados and Hecht's. Opposer is in the process of reviewing its files to determine whether there are additional answers responsive to this interrogatory, and will supplement its responses accordingly if additional information is found.

Interrogatory 9: Opposer maintains its objections to this interrogatory. Subject to these objections, Opposer states it licensed its registered "LOVING/DANCING FAMILY" mark to Michael Anthony, however, this license has been terminated.

Interrogatory 10: Opposer maintains its objection to this interrogatory. Subject to this objection, Michael and Victoria Gloster and Michael Lovitz, Esquire (former counsel for Gloster Marketing) would have information relating to any formal or informal trademark searches or investigations, if any were conducted, relating to Opposer's marks.

Interrogatory 11: Opposer maintains its objection to this interrogatory. Subject to this objection, Opposer does not know of the existence of any such market studies, surveys, focus groups or other studies referenced in this interrogatory.

Interrogatory 12: Opposer maintains its objections to this interrogatory seeking Opposer's confidential customer lists.

Interrogatory 14: Opposer maintains its objections to this interrogatory. Subject to these objections, Opposer knows of no trademarks, other than its own and Applicant's, which include as a portion thereof the words LOVING and/or FAMILY.

Interrogatory 15: Without waiving previous objections to this interrogatory, Opposer is reviewing its files for additional and more detailed information concerning instances of actual confusion. Additional information and documents concerning actual confusion will be forwarded, if found in Opposer's files.

Interrogatory 17: Opposer maintains its previous objections to this interrogatory, particularly with respect to Opposer's confidential wholesale prices. Opposer objects to the relevancy of Opposer's wholesale prices. Subject to these objections, Opposer states that it has no control over the retail prices of its products. Illustrations of retail prices may be found on the previously produced and enclosed pages showing catalog offers for Opposer's products. Opposer is reviewing its files for any additional responsive information and/or documents, and will forward any additional responsive information it locates.

Interrogatory 20: Opposer maintains its objection to this interrogatory. Subject to this objection, Opposer states that it has objected to Applicant's use of its "LOVING FAMILY"

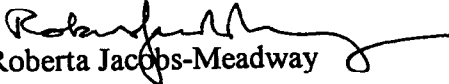
Dwayne K. Goetzel, Esq.
July 30, 2002
Page 3

mark. Opposer is reviewing its files to determine if its possesses any additional responsive information and/or documents, and will forward any additional responsive information it locates.

Interrogatory 22: Opposer maintains its objections to this interrogatory. Subject to this objection, Opposer directs Applicant to numerous of the enclosed documents which provide adequate summaries and descriptions of Opposer's business.

Opposer reserves the right to supplement these document request and interrogatory discovery responses.

Very truly yours,


Roberta Jacobs-Meadway

Enclosures

Confirmation Report - Memory Send

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Matter: 885204

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Enclosure documents and original letter to follow.

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